IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 392 OF 2005

Shramjivi Kamgar Sena ... Petitioner

Vs.

Sevak Utkarsha Samiti & Anr. ... Respondents

Mr. A.S. Peerzade for Petitioner.

Mr.R.M. Joshi for R. No. 1.

Mr. Rahul Nerlekar for R. No. 2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 03, 2006

P.C.:

. The Petitioner by the present petition challenges the recognition granted to Respondent No. 1 by the Industrial Court by order dated 16.8.2004. The Respondent No. 1 was the applicant union and the Petitioner was non applicant union. The matter was sent to Investigating Officer to submit his report. As per the report of the I.O. the Petitioner union had valid membership of 56 and the Respondent No. 1 union had membership of 40. This was disputed by Respondent No. 1 union by their application to the Industrial Court and an order came to be passed on 30.09.200 below Exh. 237. The Industrial Court held that if the party does not accept the report, it will be open to them to lead evidence in support of their contention. Pursuant to that, Respondent

No. 1 union, examined as many as six witnesses whereas Petitioner examined only one witness. Five of the witnesses who were examined, had been held by the I.O. to be common, to both the Petitioner and Respondent No. 1. These witnesses deposed to the fact that they were members of the Respondent No. 1 and had never paid membership fee or subscription of the Petitioner union. After considering the evidence which had come on record and the fact that the evidence of the witnesses examined has not been seriously disputed, the learned Industrial court recorded a finding of fact that it was respondent No. 1 union which had majority. The learned tribunal recorded that the membership fee of Petitioner union was Rs.1.50 per month but was collected was Rs.120 per year. The learned Industrial court further noted that the receipts indicate that the money was collected on 17.3.1998 but in the cash book the entries were recorded on 16.3.1998 and an amount of Rs.500/- on 19.3.2000. For all the aforesaid reasons, the Industrial Court came to the conclusion that the membership records produced by the Petitioner union would not be relied upon. In that context of the matter, the evidence was rejected and the evidence of the Respondent No. 1 Union was accepted.

. The duty cast on the Industrial court was to

examine whether the Respondent No. 1 Union had complied with the requirement of Section 12 of the M.R.T.U. & P.U.L.P. Act. The report of the I.O. would show that the respondent No. 1 union, less 5 members claimed by both Unions had 40 members. If these five members were considered, then their strength would be 45 members. That would be more than 30% of the employees strength in the employment. The respondent No. 1 therefore, had established that they had more than 30% of the membership of the employees in Respondent No. 2 establishment. The evidence of the Petitioenr Union was rejected as they were unable to substantiate their evidence. Once that be the case, and as nothing was pointed out to disentitle the Respondent No. 1 from being registered, in our opinion, these are findings of fact. Even otherwise the learned tribunal has considered the matter. There is no error of law apparent on the face of the record warranting interference of this court in exercise of its extra ordinary jurisdiction. Hence, petition rejected.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**